

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of Lance Lawrence  
Sorenson, doing business as LB  
Construction

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on before Administrative Law Judge Beverly Jones Heydinger ("ALJ") on November 8, 2006, for a prehearing conference at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401. The prehearing conference was held pursuant to a Notice of and Order for Hearing and Notice of Prehearing Conference, dated September 19, 2006.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Labor and Industry ("Department"). The Respondent, Lance Lawrence Sorenson, did not appear in person or by counsel. The record closed upon the Respondent's default on November 8, 2006.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61,<sup>1</sup> the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, Director of Legal Services, Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155 to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

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<sup>1</sup> Unless otherwise noted, the 2004 Minnesota Statutes and the 2005 Minnesota rules apply.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

### **STATEMENT OF ISSUE**

1. Did Respondent engage in unlicensed residential building contractor activity in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b, and 326.842?

2. By failing to obtain the necessary building permits, did Respondent engage in fraudulent and deceptive practice in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040?

3. Did Respondent perform in breach of contract in violation of Minn. Stat. § 326.91, subd. 1(4)?

4. Did Respondent demonstrate untrustworthiness and financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1 (6)?

5. By failing to use the proceeds of a downpayment for the intended purpose, did Respondent violate Minn. Stat. § 326.91, subd. 1(8)?

6. By failing to respond to the Department's efforts to investigate the alleged violations, did Respondent violate Minn. Stat. § 45.027, subd. 1a?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. On September 25, 2006, a copy of the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges was sent by first class mail to Lance Lawrence Sorenson, d/b/a/ LB Construction, 504 – 1<sup>st</sup> Street NW, Faribault, MN 55021, as appears from an Affidavit of Service on file herein.

2. The Administrative Law Judge sent the Respondent a letter dated September 28, 2006, restating the date of the prehearing conference, and restating that, should he fail to appear, the allegations against him could be accepted as true, and disciplinary action imposed.

3. On October 5, 2006, a copy of the Amended Statement of Charges was sent by first class mail to the Respondent, as appears from an Affidavit of Service on file herein.

4. None of the documents referenced above were returned by the U.S. Post Office as undeliverable.

5. The Respondent failed to appear at the prehearing conference, did not obtain the Administrative Law Judge's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and it did not request a continuance or any other relief.

6. The Notice of and Order for Hearing and Notice of Prehearing Conference contained the following informational warning:

Respondent's failure to appear at the prehearing conference may result in a finding that the Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and its proposed action may be upheld.

7. Because Respondent failed to appear, he is in default.

8. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice of and Order for Hearing and Notice of Prehearing Conference, and the Amended Statement of Charges, are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Labor and Industry are authorized to consider the charges against Respondent under Minn. Stat. §§ 326.91, 45.027, subd. 1, 45.024, and 14.50.

2. Respondent received due, proper and timely notice of the charges against him, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has given proper notice and complied with all relevant procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations and the issues set out in the Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of his failure, without the Administrative Law Judge's prior consent, to appear at the prehearing conference.

6. By entering into contracts for greater than \$15,000 to perform residential construction and failing to obtain a residential building contractor's license, Respondent violated Minn. Stat. §§ 326.84, subds. 1 and 1b, and 326.842.

7. By failing to obtain the necessary building permits, Respondent engaged in fraudulent and deceptive practice in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040.

8. By failing to perform the work for which he contracted, Respondent violated Minn. Stat. § 326.91, subd. 1(4).

9. By failing to use the proceeds of a down payment for the intended purpose, Respondent violated Minn. Stat. § 326.91, subd. 1(8).

10. By accepting down payments and failing to perform the work for which he contracted, Respondent demonstrated untrustworthiness and financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1 (6).

11. By failing to respond to the Department's efforts to investigate the alleged violations, Respondent violated Minn. Stat. § 45.027, subd. 1a.

12. The Department has demonstrated that Respondent has violated the provisions of law governing residential building contractors, and that discipline and/or civil penalties pursuant to Minn. Stat. § 326.91, subd. 1 and 45.027, subds. 6 and 7 is appropriate.

13. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Commissioner of the Department of Labor and Industry take adverse action against Respondent, censure Respondent, and/or impose a civil penalty upon Respondent.

Dated this 21st day of November, 2006.

/s/ Beverly Jones Heydinger  
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BEVERLY JONES HEYDINGER  
Administrative Law Judge

Reported: Default (no tapes)